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# In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 863.

DARREL W. JONES,

*Petitioner,*

vs.

CHARLES J. FARONI, JR.,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

## REPLY BRIEF OF PETITIONER.

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## REPLY BRIEF OF PETITIONER.

We wish to correct the misstatement of facts contained in the brief of respondent in opposition. Counsel for respondent knows full well that the federal question in this case was raised by petitioner in the Supreme Court of Ohio by petitioner's motion for rehearing which was denied on October 27, 1965. Also how the federal question arose is set forth in the petition filed herein under reason "4," page 12, last paragraph. A copy of said motion for rehearing is filed in this Court in this case. The Supreme Court of Ohio could have made a decision in this case but denied petitioner's motion for rehearing. The judgment of the Supreme Court of Ohio is not based on the law of Ohio. When the Ohio Court of Appeals made their decision in this case, the law of Ohio at that time was that the trial judge was presumed to act properly—this presumption was subsequently overruled by the *Price* case which was

decided by the Supreme Court of Ohio while this case was pending in the Supreme Court of Ohio waiting hearing. The *Price* case held that the trial judge must set forth the reasons for his action in ordering a new trial. The same standards should apply to this case.

## QUESTIONS PRESENTED.

Respondent confuses grounds and causes. They are not the same. O. R. C. Section 2321.17 sets forth *causes* for granting a new trial. A separate section, Ohio Revised Code, Section 2505.02, makes it mandatory that the judge set forth the *grounds* in this case. These sections are separate and independent of one another and call for two separate things. Grounds meaning facts, bases or points relied on and causes have been defined in the *Price* case as meaning reasons.

What court in Ohio has the right to set aside or reverse a judgment entered on a verdict of a jury on the weight of the evidence?

There is no Ohio case law on this point and the Ohio Supreme Court refused to pass on said issue in this case. The Constitution of Ohio (Article IV, Section 6) uses the *universal premise*:

> "* * * *No judgment of any court of record* entered on the verdict of the jury shall be set aside or reversed on the weight of the evidence except by the concurrence of all three judges of a court of appeals * * *." (Amended and adopted 1/1/45.)

The trial court was without authority because of said constitutional prohibition to order a new trial on the weight of the evidence in this case.

Respondent would have this Court believe that respondent stopped his vehicle three feet across the center line of the highway. This is not true and is supported by

no evidence in this case and respondent cites no support for same. The cross petition sworn to by respondent is contrary to this as is his testimony in this case as proven by the Bill of Exceptions filed in this Court.

Ohio follows the reasonable minds test for submitting a case to a jury. When the trial judge permitted this case to go to the jury, said judge was saying that there was sufficient evidence on each fact issue for reasonable minds to decide; both on the petition and the cross petition. The jury weighed the evidence. The trial judge then took the opposite side of the reasonable minds proposition and said the jury was wrong; that there was not sufficient evidence for what they did. The trial judge refused, even though he was required by law in this case to set forth the facts and reasons for his action in ordering a new trial.

Respondent once again raises the question of remittitur and granting a new trial on the weight of the evidence. Absolutely nowhere in this case did the trial judge set forth that he was granting a new trial because of the amount of the verdict, nor can or has respondent cited any proof of same. Petitioner has continuously put this issue in this case and it is not an issue in this case.

## CONCLUSION.

The federal question in this case was raised in the Supreme Court of Ohio at petitioner's first opportunity by way of his motion for rehearing which was denied. Said court could have decided said issues but declined all to the denial of petitioner's rights as guaranteed to him under the Fourteenth Amendment to the Constitution of the United States of America.

Petitioner has been denied the benefit of a jury trial; further, a final judgment (property right) was taken from

petitioner without due process of law as demonstrated in this case.

For the above reasons, petitioner submits that his Writ should be allowed.

Respectfully submitted,

GORDON T. CANNING, JR.,
*Counsel for Petitioner.*